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Date of Decision: 13th October 1995

SPECIAL CIVIL APPLICATION NO. 5584 of 1989

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not?
No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri D.U. Shah, Advocate, for the Petitioners

Shri M.R. Anand, Government Pleader, with Shri D.N. Patel,
Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 13th October 1995)

ORAL JUDGMENT

The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 22nd September 1986 as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) on 1st June 1989 in Appeal No. Rajkot-163 of 1986 is under challenge in this petition

under Art. 226 of the Constitution of India. By his impugned order, respondent No.1 declared the holding of the petitioners to be in excess of the ceiling limit by 10920.27 square meters. The petitioners have incidentally also challenged the order passed by and on behalf of the State of Gujarat on 23rd July 1986 under sec. 20(2) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) withdrawing the exemption granted with respect to a parcel of land bearing Survey No. 182 (part) situated within the urban agglomeration of Rajkot.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No.1 is the widow of one Popatbhai Ukabhai (the deceased for convenience) and petitioners Nos. 2 and 3 are his daughters. The deceased owned and possessed certain properties within the urban agglomeration of Rajkot. He breathed his last on 31st August 1975 before coming into force of the Act. A copy of his death certificate is at Annexure A to this petition. He was survived by his son and his widow and two daughters, that is, the petitioners in this petition. It appears that the son also breathed his last on 29th April 1987. A copy of his death certificate is at Annexure B to this petition. It is not necessary to dwell upon the son's death for the purpose of this petition. It appears that petitioner No.1 filed a declaration in the prescribed form under sec. 6(1) of the Act with respect to the holding received by the family from her deceased husband. The holding included one parcel of land bearing Survey No.. 182 (part) admeasuring 12141 square meters situated at Rajkot. Petitioner No.1 applied for exemption under sec. 20(1) of the Act and such exemption came to be granted by the order passed on 20th October 1982 on certain terms and conditions. Its copy is at Annexure D to this petition. That exemption came to be withdrawn on the ground of breach of conditions by the order passed by and on behalf of the State of Gujarat (respondent No.3 herein) on 23rd July 1986. Its copy is at Annexure G-1 to this petition. The petitioners have challenged its correctness in this petition. Later on respondent No.1 processed the declaration filed by petitioner No.1 and it was decided on 11th June 1984. Its copy is at Annexure F to this petition. In appeal the matter was remanded to respondent No.1 by the order passed by the appellate authority on 2nd October 1985. A copy of the appellate order is at Annexure G to this petition. Thereafter, by his order passed on 23rd September 1986 under sec. 8(4) of the Act, respondent No.1 declared the holding of petitioner No. 1 to be in excess of the ceiling limit by 10920.27 square meters. Its copy is at Annexure G-2 to this petition. Pursuant thereto, the final statement under sec. 9 of the Act was conveyed to petitioner No.1 with the forwarding letter of 11th October 1986. The aggrieved petitioners including the deceased son carried the matter in appeal before respondent No.2 under sec. 33 of the

Act. A copy of the memo of appeal is at Annexure H to this petition. It came to be registered as Appeal No. Rajkot-163 of 1986. By the order passed on 1st June 1989 in the aforesaid appeal, it came to be dismissed. Its copy is at Annexure I to this petition. The son of petitioner No. 1 thereafter breathed his last. The surviving heirs of the deceased father have thereupon approached this court by means of this petition under Art. 226 of the Constitution of India for questioning the correctness of the order at Annexure G-2 to this petition as affirmed in appeal by the appellate order at Annexure I to this petition.

3. So far as the challenge to the order at Annexure G-1 to this petition is concerned, it transpires that there was a clear breach of the conditions of exemption. In that view of the matter, respondent No.3 was justified in withdrawing exemption under sec. 20(2) of the Act with respect to the land in question. This order passed by and on behalf of respondent No.3 at Annexure G-1 to this petition calls for no interference by this court in this petition.

4. As pointed out hereinabove, the original owner breathed his last on 31st August 1985 leaving behind him the present petitioners and one son. It is nobody's case that the deceased left behind him any testamentary document. in that view of the matter, the succession to his properties would be governed by the relevant provisions contained in the Hindu Succession Act, 1956. Thereunder his widow, two daughters and son would get his properties equally. Each will have his or her 1/4th share therein. They would be holding all the properties of the deceased as co-owners. They cannot be treated as an association of persons in view of the Division Bench ruling of this Court in the case of Chhaganlal Trikamdas Thakker and Others v. Competent Authority, Rajkot and Others reported in 1994(1) Gujarat Current Decisions at page 1. In that view of the mater, each heir would be entitled to one ceiling unit for the purposes of the Act.

5. Under the impugned order at Annexure G-2 to this petition as affirmed in appeal by the appellate order at Annexure I to this petition, only one ceiling unit to the family has been granted. The family will be entitled to four ceiling units as all the heirs of the deceased were major on 17th February 1976 when the Act came into force.

6. It transpires from the impugned orders that the properties included one house property admeasuring 279.27 square meters. That has to be excluded from the holding of the petitioners in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and Others reported in AIR 1992 SC 1567.

7. The total holding of the petitioners is found to be to the tune of 12420.23 square meters. As pointed out hereinabove, the petitioners would be entitled to four ceiling units, each for four heirs and legal representatives left behind by the deceased owner on 31st August 1975. In that view of the matter, the area of the holding will have to be reduced by 6279.27 square meters. The holding of the family will therefore be in excess of the ceiling limit by 6140.96 square meters.

8. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure G-2 to this petition calls for no interference by this court in this petition under Art. 226 of the Constitution of India. The impugned order at Annexure G-2 to this petition as affirmed in appeal by the appellate order at Annexure I to this petition cannot be sustained in law in toto. The area declared surplus thereunder deserves to be modified from 10920.27 square meters to 6140.96 square meters. The rest of the order is required to be sustained.

9. In the result, this petition is accepted to the aforesaid extent. The order passed by the Competent Authority at Rajkot (respondent No.1 herein) on 22nd September 1986 at Annexure G-2 to this petition as affirmed in appeal by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 1st June 1989 in Appeal No. Rajkot-163 of 1986 at Annexure I to this petition is modified by substituting the area of the surplus land by 6140.96 square meters in the place of 10920.27 square meters. The matter will now go to respondent No.1 for preparation of the final statement under sec. 9 of the Act after giving an opportunity to the petitioners for selection of the land for surrender as surplus. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
